

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Kotzin)
)
For: A Method and System for)
 Managing Access to Presence)
 Attribute Information)
)
Serial No.: 10/749,321)
)
Filed: December 31, 2003)
)
Examiner: Lee, C.)
)
Art Unit: 2181)

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Attention: Board of Patent Appeals and Interferences

APPELLANTS' BRIEF

This brief is in furtherance of the NOTICE OF APPEAL, filed on December 31, 2008.

Any fees required under 37 C.F.R. §41.20, and any required petition for extension of time for filing this brief and fees therefor, are dealt with in the accompanying TRANSMITTAL OF APPEAL BRIEF.

This brief contains these items under the following headings, and in the order set forth below (37 C.F.R. § 41.37(c)):

- I REAL PARTY IN INTEREST
- II RELATED APPEALS AND INTERFERENCES
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I. REAL PARTY IN INTEREST

The real party in interest in this appeal is Motorola, Inc., a Delaware corporation.

II. RELATED APPEALS AND INTERFERENCES

With respect to other appeals or interferences that will directly affect, or be directly affected by, or have a bearing on the Board's decision in this appeal, there are no such appeals or interferences.

III. STATUS OF CLAIMS

A. Status of all claims in the proceeding

1. Claims rejected: 1-23
2. Claims allowed: none
3. Claims withdrawn: none
4. Claims objected to: none
5. Claims cancelled: none

B. Identification of claims being appealed

The claims on appeal are: 1-23

IV. STATUS OF AMENDMENTS

There have been no responses filed after the most recent Official Action made final, dated December 22, 2008.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A first aspect of the present invention (claim 1), which is being appealed, pertains to a presence attribute information server (22). The presence attribute information server (22) includes a processor (26), an interface unit (30) and a storage unit (28). The interface unit (30), which is coupled to the processor (26), includes a network interface (32) for receiving and transmitting user presence attribute information (page 8, lines 16-17). The storage unit (28), which is coupled to the interface unit (30) and the processor (26), includes user presence attribute information (24) and associated access authorization information (25), that is organized and arranged as one or more entries in a data structure (page 8, lines 5-9). The access authorization entries (60) are each associated with corresponding user presence attribute information entries (44). Each user presence attribute information entry (44) has a presence attribute value field (48), a user field, and one or more access condition entries (page 8, lines 5-9). The presence attribute value field (48) corresponds to one or more types of presence attributes (46), the user field (62) identifies one or more users (page 12, lines 15-17), and the one or more access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified one or more users (page 12, lines 17-19).

A further aspect of the present invention (claim 15), which is being appealed, pertains to a presence attribute information manager application. The presence attribute information manager application includes a processor (26), an interface unit (30) and a storage unit (28). The interface unit (30), which is coupled to the processor (26), includes a data input device (42) for receiving user presence attribute information from the user (page 10, lines 6-10) and a network interface (32) for transmitting user presence attribute information (page 9, line 29 to page 10, line 2). The storage unit (28), which is coupled to the interface unit (30) and the processor (26),

includes user presence attribute information (24) and associated access authorization information (25), that is organized and arranged as one or more entries in a data structure (page 8, lines 5-9). The access authorization entries (60) are each associated with corresponding user presence attribute information entries (44). Each user presence attribute information entry (44) has a presence attribute value field (48), a user field (62), and one or more access condition entries (page 8, lines 5-9). The presence attribute value field (48) corresponds to one or more types of presence attributes (46), the user field (62) identifies one or more users (page 12, lines 15-17), and the one or more access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified users (page 12, lines 17-19).

A still further aspect of the present invention (claim 23), which is being appealed, pertains to a method (100) for managing the access to user presence attribute information. The method (100) includes receiving a request (102) for user presence attribute information. A user requesting the user presence attribute information is then identified (104). A determination is then made as to whether the user requesting the user presence attribute information is authorized to have access to the requested user presence attribute information (page 15, lines 3-5). The determination of whether the user requesting the information is authorized includes receiving (106) any conditions relative to the requesting user associated with receiving access to the user presence attribute information. A determination (108) is then made as to whether the received conditions relative to the requesting user associated with receiving access have been met. If the conditions relative to the requesting user associated with receiving access have been met (page 15, lines 9-10), the user presence attribute information is then forwarded (110) to the requesting user.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

1. Whether claims 1, 6, 7, 10, 11, 15, 16 and 19-22 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant's Admitted Prior Art, in view of Raverdy et al., US Patent No. 6,957,217.

2. Whether claims 2-5, 13, 14 and 23 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant's Admitted Prior Art in view of Raverdy et al., US Patent No. 6,957,217, and further in view of Wade et al., US Patent No. 5,552,776.

3. Whether claims 8, 9, 17 and 18 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant's Admitted Prior Art in view of Raverdy et al., US Patent No. 6,957,217, and further in view of Fushiki et al., US Patent No. 6,433,704.

4. Whether claim 12 has been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant's Admitted Prior Art in view of Raverdy et al., US Patent No. 6,957,217, and further in view of Kruse et al., US Patent No. 6,684,279.

VII. ARGUMENT

A. Rejections under 35 U.S.C. 103

1. Whether claims 1, 6, 7, 10, 11, 15, 16 and 19-22 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant's Admitted Prior Art, in view of Raverdy et al., US Patent No. 6,957,217.

Claims 1, 6, 7, 10, 11, 15, 16 and 19-22

The Examiner rejected claims 1, 6, 7, 10, 11, 15, 16 and 19-22 as being unpatentable over applicant's alleged admitted prior art (AAPA), in view of Raverdy et al., US Patent No. 6,957,217. However, contrary to the assertions of the Examiner, the claims are neither anticipated nor made obvious in view of the teachings of the references, either alone, or in combination, in so far as the references fail to make known or obvious each and every feature of the claims. Most notably, the combination of references fail to make known or obvious an associated user field identifying one or more users that have conditional access to user presence attribute information, as well as one or more associated access condition entries, which defines the conditions when the user presence attribute information is available to the corresponding one or more users.

The Examiner relies upon alleged teachings in the background description of the present application, which the Examiner characterizes as admitted prior art, as making known the same.

However, not everything the Examiner attempts to identify as admitted prior art can be fairly characterized as admitted prior art. Nor does the Examiner account for the contextual inconsistencies in attempting to relate the allegedly admitted prior art with the teachings, which can be found in the cited and relied upon references. While most recently, the Examiner has curtailed the cited portions that he attempts to rely upon from the detailed description, which he alleges is admitted prior art, several claimed features are still unaccounted for.

The applicant acknowledges that presence attributes are presently used as a way to define, manage and convey a user's relationship relative to a communication network, the same being noted in the background description. However, the applicant does not suggest that an ability to define access conditions relative to the presence attributes exist in the prior art, nor does the applicant suggest that the access conditions are previously known to be associated with one or more users that may be attempting to obtain the user presence attributes. The Examiner is taking language in the background section out of context, and ignoring the fact that some of the background section is devoted to identifying deficiencies in the prior art, and what may be possible and desirable should a manner in which to overcome those deficiencies be developed.

Most recently, the Examiner attempts to suggest that the admitted prior art makes known an access condition. The Examiner more specifically attempts to equate the on-line status of a predefined subset of users as being a precondition of the corresponding user presence attribute information being available to the corresponding identified one or more users. However as described in the particular portion of the background section the online status is not a condition for access, but is alternatively identified as an example of one type of user presence information that may be beneficial. The Examiner is taking the reference to online status out of context, and redefining it to refer to something other than what it is intended to imply as evidenced by the context in which it is used.

Nevertheless, while it may be true that one can not receive information from a network until you are connected to and accessing the system, being on-line (physically connected to and authorized to access the system) is not in and of itself a condition associated with a particular user's presence attribute information, but is associated with access to the network or the system, in general. Not only is the online status not identified as a condition for access, but even if it

were interpreted as a generic condition for access, there is no suggestion or teaching in the admitted prior art that this constitutes access authorization entries associated with a particular user's presence attribute information, "wherein said access authorization entries are each associated with corresponding user presence attribute information entries, each user presence attribute information entry having a presence attribute value field, corresponding to one or more types of presence attributes, and each access authorization information entry having a user field identifying one or more users and one or more access condition entries, wherein the access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified one or more users". Said generic access condition, (i.e. being on-line, physically connected and communicating with a network), is not specific to any particular user presence attribute information, nor is it specifically associated with any particular user presence attribute information, as provided by the claims of the present application.

Consequently, the claimed elements the Examiner attempts to associate with the alleged admitted prior art, can not be fully supported, as it attempts to suggest access conditions are known (which is a mischaracterization of the actual statement made in the background description), which relate to systems in general, but which are not associated with a particular user presence attribute information entry, as provided in the claims, but alternatively relates to ones active generic presence within a system, which generally is a precondition of transmitting and/or receiving any and all information from a system, and not just another user's presence information.

However, the Examiner's attempted reliance upon the applicants own background discussion is understandable in so far as it provides the only attempted link by the Examiner to user presence information, as understood by one skilled in the art. Contextually, the other relied upon references do not speak to user presence information, and therefore are contextually inconsistent with the claims of the present application, as well as the discussion in the background section of the present application.

Despite the apparent suggestion that the background section speaks to an access condition, the Examiner appears to admit that the background section does not teach an presence

attribute information server and/or a manager application, ..., where said access authorization entries are each associated with corresponding user presence attribute information. However, the Examiner then attempts to suggest that Raverdy et al., '217, teaches such features, without ever relating the same back to the features associated with the other relied upon reference, namely the applicant's alleged admitted prior art.

In essence, the Examiner attempts to address claimed elements in piece-meal fashion without ever providing a nexus between the teachings of the two disparate references. The Examiner focuses on the presence of similarly named elements, namely user information 618 and access rights manager 626, without taking into account their contextual inconsistencies. In other words, the Examiner ignores that Raverdy et al., '217, is silent as to user presence attribute information, and does not conditionally provide access to such information, but alternatively relates to the conditional access to event information, where user information is used to determine whether a particular user is authorized to have access to information corresponding to a particular event or event location for which a particular user has purchased an admission (see col. 2, lines 20-31. Such information is not the same as presence attribute information associated with another user.

Furthermore, to the extent that Raverdy et al., '217, makes reference to user information, the information is not the information being received, but is the information being transmitted to the information server in order to confirm access to the event or location information (see col. 10, lines 30-39). As such, the teachings relative to Raverdy et al., '217, are contextually inconsistent with the claims of the present application providing conditional access authorization entries, which alternatively define the circumstances when one or more users are authorized to have access to a particular user's presence information. Consequently, the Examiner has failed to find a set of teachings, which when viewed in combination, can not only be said to make known or obvious each and every element of the claims, but also can be said to make known or obvious each of the claimed interactions between each of the claimed elements. Having failed to provide a contextually consistent showing of each and every feature of the claims being known or obvious, the Examiner has failed to adequately support the present rejection.

As a result, the Examiner has failed to present a valid rejection of independent claims 1

or 15, as well as any of the claims, which depend therefrom.

2. Whether claims 2-5, 13, 14 and 23 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant's Admitted Prior Art in view of Raverdy et al., US Patent No. 6,957,217, and further in view of Wade et al., US Patent No. 5,552,776.

Claims 2-5, 13, 14 and 23

In further formulating his rejection relative to the remaining claims 2-5, 13, 14 and 23, the material defect noted above, continues to be present, in so far as the further rejection of remaining dependent claims 2-5, 13 and 14, as well as independent claim 23 continue to rely upon a mischaracterization of passages from applicant's own specification, which have been mischaracterized as admitted prior art, an inappropriate combination with Raverdy et al., '217, and/or a misinterpretation relative to what the combined teachings may or may not teach or make obvious. The further rejection additionally relies upon Wade et al., '776, but Wade et al., '776, similarly fails to account for the claimed features that were inappropriately alleged as being associated with any kind of alleged prior art. Furthermore, Wade et al., '776, similarly fails to provide a teaching which is specifically related to the management and conveyance of presence information. As such, the Examiner's final rejection of claims 2-5, 13, 14 and 23, should similarly be overturned, and the case remanded to the Examiner for further prosecution and/or an allowance of the same.

3. Whether claims 8, 9, 17 and 18 have been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant's Admitted Prior Art in view of Raverdy et al., US Patent No. 6,957,217, and further in view of Fushiki et al., US Patent No. 6,433,704.

Claims 8, 9, 17 and 18

Fushiki et al. '704, fails to account for the above noted deficiencies relative to independent claims 1 or 15 from which claims 8, 9 17 and 18, depend. Furthermore, Fushiki et al., '704, similarly fails to provide a teaching which is specifically related to the management and conveyance of presence information. As such, the Examiner's final rejection of claims 8, 9, 17 and 18, should similarly be overturned, and the case remanded to the Examiner for further

prosecution and/or an allowance of the same.

4. Whether claim 12 has been properly rejected under 35 U.S.C. 103(a), as being unpatentable over Applicant's Admitted Prior Art in view of Raverdy et al., US Patent No. 6,957,217, and further in view of Kruse et al., US Patent No. 6,684,279.

Claim 12

Lastly, claim 12 depends from an inappropriately rejected base claim, namely independent claim 1, which is allowable over the references relied upon by the Examiner for the reasons noted above. Kruse et al., '279, fails to account for the above noted deficiencies relative to independent claim 1, as well as fails to provide a teaching in a contextually consistent environment, which includes the conveyance of user presence information. Consequently at least to the extent that claim 1 is allowable over the references presently being relied upon by the Examiner, claim 12 should similarly be allowable.

Conclusion

In view of the fact that the alleged prior art as described in the background of the art section of the present application fails to in fact teach or make known each and every feature attributed to the reference, as well as the fact that Raverdy et al., '217, is similarly deficient, and the fact that the teachings of the two have not been combined in a contextually consistent manner, which serves as the basis for the rejection of each of the claims, the combination of references and teachings relied upon by the Examiner fail to make known or obvious each and every feature of the claims. As a result, the applicant would respectfully request that the Examiner's final rejection of the claims be withdrawn, and that the claims be permitted to proceed to allowance.

Respectfully submitted,

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VIII**APPENDIX OF CLAIMS**

The following is the text of the claims involved in this appeal:

1. A presence attribute information server comprising:
 - a processor;
 - an interface unit, coupled to the processor, including a network interface for receiving and transmitting user presence attribute information; and
 - a storage unit, coupled to the interface unit and the processor, including user presence attribute information and associated access authorization information organized and arranged as one or more entries in a data structure;
 - wherein said access authorization entries are each associated with corresponding user presence attribute information entries, each user presence attribute information entry having a presence attribute value field, corresponding to one or more types of presence attributes, and each access authorization information entry having a user field identifying one or more users and one or more access condition entries, wherein the access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified one or more users.
2. A presence attribute information server in accordance with claim 1 wherein at least one of the one or more access condition entries includes a predetermined period of time to be matched.

3. A presence attribute information server in accordance with claim 2 wherein the predetermined period of time includes a time of day.
4. A presence attribute information server in accordance with claim 2 wherein the predetermined period of time includes a day of the week.
5. A presence attribute information server in accordance with claim 2 wherein a predetermined period of time includes a point in time identifying the beginning of the predetermined period and a point in time identifying the end of the predetermined period.
6. A presence attribute information server in accordance with claim 1 wherein at least one of the one or more access condition entries includes a proximity relative to a predetermined location.
7. A presence attribute information server in accordance with claim 6 wherein the predetermined location includes a specific place.
8. A presence attribute information server in accordance with claim 6 wherein the predetermined location is the present position of at least one of another item or person.
9. A presence attribute information server in accordance with claim 6 wherein the proximity corresponds to a predetermined distance.

10. A presence attribute information server in accordance with claim 6 wherein the location is relative to the at least one of item or person associated with the user presence attribute information.

11. A presence attribute information server in accordance with claim 6 wherein the location is relative to the user requesting the user presence attribute information.

12. A presence attribute information server in accordance with claim 1 wherein the access condition entries include a flag which, when an access condition is met, identifies whether access to the associated user presence attribute information is authorized or precluded.

13. A presence attribute information server in accordance with claim 1 further comprising an access validation unit, coupled to the interface unit and the storage unit, the access validation unit being adapted for

receiving from a user a request for user presence attribute information associated with at least one of a particular item or a particular person,

receiving one or more of status information of the user requesting the user presence attribute information, status information of the at least one of the particular item or the particular person associated with the requested user presence attribute information, and a current time and date,

comparing the one or more of the status information of the user requesting the user

presence attribute information, the status information of the at least one of the particular item or the particular person associated with the requested user presence attribute information, and the current time and date to the one or more corresponding access authorization entries associated with the requested user presence attribute information to determine if appropriate access conditions have been met, and

authorizing access to the requested user presence attribute information, if the comparison indicates that the appropriate access conditions have been met.

14. A presence attribute information server in accordance with claim 13 wherein the access validation unit includes a set of prestored instructions for execution by the processor.

15. A presence attribute information manager application comprising:
a processor;
an interface unit, coupled to the processor, including a data input device for receiving user presence attribute information from the user and a network interface for transmitting user presence attribute information;

a storage unit, coupled to the interface unit and the processor, including user presence attribute information and associated access authorization information organized and arranged as one or more entries in a data structure;

wherein said access authorization entries are each associated with corresponding user presence attribute information entries, each user presence attribute information entry having a presence attribute value field, corresponding to one or more types of presence attributes, and

each access authorization information entry having a user field identifying one or more users and one or more access condition entries, wherein the access condition entries define the conditions when the corresponding user presence attribute information is available to the corresponding identified users.

16. A presence attribute information manager application in accordance with claim 15 wherein said interface unit is further adapted for receiving access conditions associated with one or more users, which are used to formulate access authorization information entries.

17. A presence attribute information manager application in accordance with claim 15 wherein said interface unit further includes a data output device for presenting conditions associated with authorizing access in an iconic format.

18. A presence attribute information manager application in accordance with claim 17 wherein said data input device is further adapted for modifying the conditions being presented by the data output device associated with authorizing access to user presence attribute information associated with one or more users.

19. A presence attribute information manager application in accordance with claim 15 further comprising a broadcast unit, coupled to the interface unit and the storage unit, the broadcast unit being adapted to transmit updated user presence attribute information to at least one of a presence attribute information server and subscribed users, that are currently authorized to

receive updates, when the user presence attribute information changes.

20. A presence attribute information manager application in accordance with claim 19 wherein the broadcast unit includes a set of prestored instructions for execution by the processor.

21. A presence attribute information manager application in accordance with claim 15 wherein the presence attribute information manager application is incorporated as part of a portable electronic device.

22. A presence attribute information manager application in accordance with claim 21 wherein the portable electronic device is a wireless radio frequency telephone.

23. A method for managing the access to user presence attribute information comprising:
receiving a request for user presence attribute information;
identifying a user requesting the user presence attribute information;
determining whether the user requesting the user presence attribute information is authorized to have access to the requested user presence attribute information including
receiving any conditions relative to the requesting user associated with receiving access to the user presence attribute information, and
determining whether the received conditions relative to the requesting user associated with receiving access have been met;

wherein, if the conditions relative to the requesting user associated with receiving access have been met, then forwarding the user presence attribute information to the requesting user.

IX EVIDENCE APPENDIX

None

X RELATED PROCEEDINGS APPENDIX

None